NO. 19-1409

IN THE

Supreme Court of the United States

OCTOBER TERM 2019

LINDA FROST,

Petitioner,

—v.—

THE COMMONWEALTH OF EAST VIRGINIA,

Respondent.

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF EAST VIRGINIA

BRIEF FOR PETITIONER

ORAL ARGUMENT REQUESTED

Team A – Counsel for Petitioner

QUESTIONS PRESENTED

I. Whether an individual with severe psychological impairment can give a knowing and intelligent *Miranda* waiver during a custodial interrogation where she was in a paranoid delusional state before making inculpatory statements to the interrogating officer?

II. Whether abolishing the right of the mentally ill to present an insanity defense and replacing the right with a state evidentiary rule violates the cruel and unusual punishments clause of the Eighth Amendment right and the due process clause under the Fourteenth Amendment?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

United States Supreme Court Cases (cont'd)*.....*Page(s)

***Federal Circuit Court Cases*.....**

***State Supreme Court Cases*.....**

STATEMENT OF JURISDICTION

The decision of the Supreme Court of East Virginia was entered on December 31, 2018. R. at 9. This Court granted the petition for writ of certiorari on July 31, 2019. R. at 12. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a) (1988).

STANDARD OF REVIEW

This Court should review whether the Supreme Court of East Virginia's legal conclusions were proper *de novo* as questions of law are reviewed *de novo. United States v. Kennedy*, 372 F.3d 686, 696 (4th Cir. 2004); *United States v. Cameron*, 907 F.2d 1051, 1061 (11th Cir. 1990).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment provides that "[n]o person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." U.S. Const. amend. V.

The Eighth Amendment provides "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII.

The Fourteenth Amendment provides, as relevant "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, cl. 1.

East Virginia. Code § 21-3439 (2016) provides that evidence of a mental disease or defect is admissible to disprove competency to stand trial or to disprove the mens rea element of an offense, but the lack of ability to know right from wrong is no longer a defense.

STATEMENT OF THE CASE

I. Statement of the Facts

Smith's Death. Before his death, Chris Smith ("Smith") worked as a poultry inspector. R. at 2. The week before his body was found, a family member overheard Smith having a heated argument with his girlfriend Linda Frost ("Ms. Frost") over the phone; the family member did not hear the details of the couple's dispute. R. at 2. The following week, Ms. Frost picked up a 2 p.m. to 8 p.m. night shift at her job at a local seafood restaurant. R. at 2. Since that day was one of the restaurant's busier nights, no one saw Ms. Frost's exact time of departure after her shift. R. at 2. Sometime after she finished her shift, two witnesses noticed a woman matching Ms. Frost's description near Lorel Park—although the descriptions matched Ms. Frost, neither eyewitness could definitively identify Ms. Frost as the woman matching their description. R. at 2. The following morning, Smith's body was discovered in his office by his coworkers. R. at 2. The coroner estimated that Smith was killed between 9 p.m. and 11 p.m. the night before. R. at 3. The Campton Roads Police Department brought Ms. Frost in for questioning the same day Smith's body was uncovered. R. at 2.

The Interrogation. When Ms. Frost was brought into the interrogation room, Officer Nathan Barbosa ("Officer Barbosa") read Ms. Frost her *Miranda* rights and provided her with a written *Miranda* waiver for her to sign. R. at 2. While Ms. Frost signed and returned the form to him, nothing indicated that Ms. Frost understood her rights before Officer Barbosa began his interrogation. R. at 2. When asked about Smith's death and whether she knew what happened to him, Ms. Frost blurted out "I did it, I killed Chris . . . I stabbed him, and I left the knife in the

park." R. at 3.[1] Ms. Frost then told Officer Barbosa that the voices in her head implored her to "protect the chickens at all costs," that she did Smith a "great favor," and that she believed that Smith would be reincarnated as a "sacred" chicken after death. R. at 3. Ms. Frost further pleaded that Officer Barbosa join her cause to liberate all chickens in Campton Roads. R. at 3. Only after Ms. Frost made her inculpatory statements, and only after he had reason to believe that Ms. Frost was suffering from a psychological condition did Officer Barbosa ask whether she wanted to invoke her right to counsel. R. at 3. When Ms. Frost voiced that she did, Officer Barbosa ended the interrogation. R. at 3.

Dr. Frain's Clinical Diagnoses. While awaiting trial in the United States District Court for the Southern District of East Virginia, clinical psychiatrist Dr. Desiree Frain diagnosed Ms. Frost with paranoid schizophrenia. R. at 3. During her interviews with Dr. Frain, which occurred sometime after her interrogation, Ms. Frost stated that Smith "needed to be killed to protect the sacred lives of the chickens that Smith endangered through his job." R. at 4. Because of her psychological disorder, Dr. Frain placed Ms. Frost on medication so that she could be deemed competent to stand for her federal trial. R. at 4. After her interviews with Ms. Frost, Dr. Frain proffered that it was highly likely Ms. Frost was in a psychotic state and suffering from severe delusions and paranoia both on the day Smith was killed and the day she was interrogated. R. at 4. Dr. Frain further testified that even though she intended to kill Smith and knew she was doing so, Ms. Frost's severe delusions and paranoia prevented her from controlling or fully understanding the wrongfulness of her actions. R. at 4.

[1] The knife was later discovered in Lorel Park; although the knife was consistent with a set found in Ms. Frost's kitchen, no identifiable prints were recovered from the knife. R. at 3.

Abolition of the Insanity Defense. Until 2016, East Virginia allowed defendants to raise the insanity defense under the *M'Naghten* rule.[2] R. at 4. In 2016, the state legislature adopted E. Va. Code § 21-3439, which abandoned the *M'Naghten* rule in favor of a "mens rea approach." R. at 4. Under the mens rea approach, evidence of a mental disease or defect is only admissible to disprove competency to stand trial or to disprove the mens rea element of an offense. R. at 4. Due to E. Va. Code § 21-3439, Ms. Frost was unable to raise insanity at her state trial, nor was she allowed to admit Dr. Frain's testimony to show that she could not understand or control the wrongfulness of her actions in the days surrounding Smith's death.

II. Procedural History

After being acquitted for murder in federal court, Ms. Frost was then prosecuted for murder in East Virginia state court. R. at 4. Ms. Frost was deemed competent to stand trial just as she was in federal court. R. at 4. Ms. Frost moved to suppress her confession and moved the trial court to hold that, by abolishing the insanity defense, E. Va. Code § 21-3439 violated her Eighth Amendment right against cruel and unusual punishment and her Fourteenth Amendment right to due process R. at 5. Circuit Court Judge Joshua Hernandez denied both motions notwithstanding the undisputed evidence that Ms. Frost did not understand either her *Miranda* rights or the consequences of signing the waiver form. R. at 5. Judge Hernandez reasoned that Ms. Frost appeared objectively lucid and capable of waiving her rights, and that Officer Barbosa had no reason to know or suspect she was mentally unstable until after she made the inculpatory

[2] *M'Naghten* provided that a person proved their insanity defense if they clearly proved that: (1) at the time of committing the act, the person was suffering from a mental defect to the point where they could not understand the nature and quality of the act, or (2) the person did not know that what they were doing was wrong. *Clark v. Arizona*, 548 U.S. 735, 747–48 (2006).

statements. R. at 5. Furthermore, Judge Hernandez held that E. Va. Code § 21-3439 neither imposed cruel and unusual punishment nor violated Ms. Frost's Due Process rights. R. at 5.

On appeal, the East Virginia Supreme Court affirmed the decision of the Circuit Court. R. at 9. There, the state supreme court held that Ms. Frost had made a valid *Miranda* waiver despite the fact that she did not comprehend her *Miranda* rights, and that E. Va. Code § 21-3439 did not offend Ms. Frost's Eighth or Fourteenth Amendment rights. R. at 9. This Court granted Ms. Frost's timely writ of certiorari on July 31, 2019. R. at 12.

SUMMARY OF THE ARGUMENT

The Constitution has historically protected mentally ill individuals from being held to the same standards as the sane for legal situations in which they may find themselves. When she was charged with murder in state court, Ms. Frost, who suffers from severe psychological impairment, was forced to testify against herself at trial and was ultimately precluded from asserting a meaningful defense at trial. The East Virginia Supreme Court incorrectly held that Ms. Frost's confession could be used against her and that the state statute abolishing a constitutionally protected right was not cruel and unusual punishment nor a denial of due process.

I.

It is well established that an individual's waiver of their Fifth Amendment rights under *Miranda* must be voluntary, knowing, and intelligent. The voluntariness of a waiver requires one to be made without the influence of coercion, while the knowing and intelligent prong requires the individual comprehend their rights before forfeiting them to law enforcement. Waiver of one's *Miranda* rights be voluntary *and* comprehending, and the absence of either element renders the waiver invalid. The East Virginia Supreme Court improperly held a voluntary waiver is tantamount to a knowing and intelligent one. According to the lower court, an individual's confession would

per se be admissible at trial so long as there was no police coercion despite the fact that the individual may not have actually understood their rights. The lower court's misapplication of *Miranda's* waiver precedent allowed the state to use a confession against Ms. Frost despite the undisputed fact that she lacked the capacity to understand her Fifth Amendment rights.

II.

Additionally, the Eighth and Fourteenth Amendments require that an affirmative insanity defense be afforded to defendants. The Eighth Amendment prohibition on cruel and unusual punishment protects the mentally ill facing punishment for crimes when they lack the ability to appreciate the wrongfulness of their actions, while the Fourteenth Amendment requirement of due process guarantees that defendants receive protections historically granted to them.

The traditional, affirmative insanity defense differs from the mens rea approach by allowing an acquittal despite all elements of the charge being proven. In contrast, the mens rea approach, as implemented by East Virginia, only permits evidence of mental illness to disprove that they formed intent to commit an act, regardless of whether they possessed the ability to know right from wrong. The mens rea approach shirks historically granted protection of the affirmative insanity defense in favor of an evidentiary limitation, which does not provide the same degree of protection for the mentally ill. This limitation functions as an abolition of the insanity defense as it excludes the evidence most defendants must rely upon to prove their inability to appreciate the wrongfulness of their actions.

ARGUMENT

I. The Supreme Court of East Virginia Improperly Allowed Ms. Frost's Confession to be Introduced Because She Lacked the Mental Capacity to Waive Her Miranda Rights and Because Officer Barbosa Failed to Determine Whether She Properly Understood Them Before Interrogating Her.

Even before *Miranda*, this Court understood that using the confession of a mentally insane individual against them was a fundamental denial of due process. *Blackburn v. Alabama*, 361 U.S. 199, 207 (1960) ("Surely in the present stage of our civilization a most basic sense of justice is affronted by the spectacle of incarcerating a human being upon the basis of a statement he made while insane . . ."). This Court in *Miranda* fashioned the four disclosures that law enforcement must give an individual before their statements could be used against them,[3] as well as the added protection that privilege against self-incrimination cannot be involuntarily, unknowingly or unintelligently waived. *Miranda v. Arizona*, 384 U.S. 436, 444–45 (1966).

However, the East Virginia Supreme Court inextricably intertwined the voluntary, knowing, and intelligent requirements for *Miranda* waivers. According to the state high court, if law enforcement does nothing to coerce or deceive one into waiving their rights (factors only affecting the voluntariness of the waiver), then curiously there can be no question that one adequately knew and understood their constitutional rights. R. at 5–6. Applying this reasoning, the East Virginia Supreme Court completely ignored the undisputed facts that Ms. Frost did not understand her rights or the consequences of signing the M*iranda* waiver before speaking to Officer Barbosa. While Ms. Frost may not have the exhibited symptoms of psychological disorder for Officer Barbosa to see, this Court in *Miranda* instructed that seemingly valid waivers must be

[3] The four disclosures law enforcement must provide are famously: (1) the individual has the right to remain silent, (2) any statement the individual makes can be used as evidence against him, (3) the individual has the right to an attorney, and (4) if the individual cannot afford one, an attorney will be appointed to them. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

rescinded if it is later shown the individual could not comprehend their rights. *Miranda*, 384 U.S. at 475. Therefore, because Ms. Frost did not knowingly and intelligently forfeit her Fifth Amendment privileges, we respectfully ask this Court to reverse the decision of the East Virginia Supreme Court and remand for further proceedings.

A. The East Virginia Supreme Court misunderstood this Court's decisions in *Connelly* and *Spring* to teach that waivers will always be valid absent police misconduct regardless of whether individuals actually understood their *Miranda* rights.

Before an individual's confession or statements can be used against them, the individual must both (1) voluntarily and (2) "knowingly and intelligently" waive their Miranda rights. *Colorado v. Spring*, 479 U.S. 564, 573 (1987) (citing *Moran v. Burbine*, 475 U.S. 412, 421 (1986)).

Colorado v. Connelly, 479 U.S. 157 (1986), which the East Virginia Supreme Court heavily relied on, taught that an individual could only "involuntarily" waive their *Miranda* rights in the face of police coercion, misconduct, or impropriety. *Id.* at 163–64. In *Connelly*, a man approached an off-duty police officer and informed him that he wanted to confess to a murder. *Id.* at 160. The officer *Mirandized* the man, who then proceeded to confess to a murder he committed in another city. *Id.* A second officer then joined the suspect and the first officer, at which point the suspect was re-*Mirandized* and again confessed to the same murder. *Id.* After he was taken into custody, the man told law enforcement that, among the many voices in his head, it was the voice of God which commanded him to confess to the officers. *Id.* at 161.

The suspect argued later that his cognitive impairment rendered his statements to police involuntary under *Miranda*, thus his waiver should have been rescinded and his statements suppressed. *Id.* at 164. In rejecting the suspect's argument, this Court reasoned that one's cognitive impairment is a factor that must be considered in reviewing the "voluntariness" of a waiver, but that police coercion is necessary to show that a confession was *involuntarily* given. *Id.* at 167

(emphasis added). Thus, *Connelly* only relates police misconduct or what a reasonable officer would have understood under the circumstances to the issue of voluntariness, not whether the misconduct itself affects one's comprehension of their constitutional rights. *Id.* at 175 (Brennan, J., dissenting) (highlighting psychiatric testimony below that showed the suspect "probably had the capacity to know that he was being read his Miranda rights [but] that he wasn't able to understand that information because of [his] command hallucinations").

However, the Court in *Colorado v. Spring* additionally taught that an individual must also *comprehend* their constitutional rights even if they voluntarily waive them. 479 U.S. 564, 574 (1987). In *Spring*, the defendant was arrested in Missouri for trafficking illegal firearms across state lines. *Id.* at 566. The defendant was advised of his *Miranda* rights, signed a written *Miranda* waiver, and thereafter admitted that he "shot another guy" in Colorado. *Id*. at 567. Months later, the defendant was re-*Mirandized*, again signed a written waiver and this time stated that he "wanted to get it off his chest" that he killed the Colorado man. *Id*. at 567–68. The defendant later argued that his first confession hinting at the murder had to be suppressed since he was not advised that he would be questioned about crimes unrelated to the firearms trafficking he was arrested for. *Id.* at 569. Without a full understanding of the nature of charges against him, the defendant posited that his waivers could not have been "knowing and intelligent" as required by *Miranda*. *Id.* Although this Court rejected the "omniscient" degree of comprehension argued by the defendant, the Court explained that both voluntariness *and* comprehension are required of a defendant before their confessions may be used against them:

> Second, the waiver must have been made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the "totality of the circumstances surrounding the interrogation" reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the Miranda rights have been waived.

Id. at 573 (quoting *Fare v. Michael C.*, 442 U.S. 707, 725 (1979)). Because the defendant in *Spring* had not asserted that his waiver was not the product of coercion or deception, nor did he allege that he misunderstood the nature of his *Miranda* rights before speaking with law enforcement, this Court held that he voluntarily, knowingly, and intelligently waived his Fifth Amendment rights. *Id.* at 573–75. According to this Court, voluntariness and comprehension are both necessities to effectuate a *Miranda* waiver and cannot be divorced from one another. *Id.* at 575.

Here, the East Virginia Supreme Court made a constitutionally inaccurate leap in its application of *Miranda*, *Connelly*, and *Spring*. The East Virginia Supreme Court's holding welds the "voluntary, knowing, and intelligent" prongs of waiver into one central inquiry—whether the suspect was the victim of improper police coercion. R. at 7. Accordingly, comprehension of rights can be completely ignored so long as law enforcement did not coerce, pressure, or deceive the individual during interrogation. R. at 6–7. While *Connelly* was decided solely on the issue of voluntariness, Justice Brennan highlighted that the suspect there, like Ms. Frost, could be capable of being aware that rights were read to him, but that did not change the fact that the suspect still lacked the psychological capacity to comprehend his rights. This Court's decision in *Spring* affirmed that the constitution requires voluntariness *and* comprehension of rights for an effective waiver, not voluntariness *or* comprehension. In diverting its attention to the officers who collect suspects' waivers, the East Virginia Supreme Court has ignored those who, like Ms. Frost, lack the sufficient mental capacity to waive their constitutional protections from the outset.

B. <u>This Court has already instructed that Congress and the states cannot allow voluntariness to serve as the sole requirement for admitting inculpatory statements against defendants.</u>

In *Dickerson v. United States*, this Court held that legislatures do not have the power to modify the constitutional floor of *Miranda's* waiver requirements. 530 U.S. 428, 444 (2000).

There, Congress enacted 18 U.S.C. § 3501 (1968), "which in essence [made] the admissibility of [confessions] turn solely on whether they were made voluntarily." *Id.* at 432. Rather than requiring law enforcement to follow *Miranda* and its progeny, § 3501 instead only made the presence of *Miranda* warnings a factor that lent in favor of finding a confession to be voluntarily given—whether the suspect actually comprehended their rights would be immaterial under the statute. *Id.* at 438. Under § 3501, it would not matter whether police mechanically recited a suspect's *Miranda* rights, nor would it matter whether the suspect understood the protections they are afforded; if the suspect incriminated themselves freely and without police misconduct, their confession would be admissible against them. *Id.* at 432. Regardless of whether one considered the sole-voluntariness requirement to be a hallowing of *Miranda's* waiver requirements or a bypass of waiver altogether, the ultimate effect of § 3501 removed the constitutional requirement that an arrestee comprehended their rights before effectuating a waiver. Thus, in holding that Miranda and its progeny were constitutional decisions rather than judicial rules, this Court in *Dickerson* held that legislatures fundamentally do not have the power to allow confessions against suspects absent the constitution's voluntary, knowing, and intelligent prongs of a waiver. *Id.* at 444.

East Virginia's interpretation of *Miranda* and its progeny are functionally identical to the admission of confessions under 18 U.S.C. § 3501. As the majority below highlighted, "[t]he question is *not* whether a defendant's mental impairment prevented her from understanding her *Miranda* rights. Rather, the focus is on whether a reasonable officer would believe Ms. Frost appeared to understand her rights and thus proceed to interrogate her based on that objective understanding." R. at 6 (emphasis added). The majority acknowledges that, based on the undisputed facts from the Circuit Court, Ms. Frost is "evidently mentally ill" and that she neither understood her rights during her interrogation nor could comprehend the consequences of signing

the written waiver. R. at 5–6. However, just as in § 3501, the East Virginia Supreme Court's interpretation of *Miranda*, *Spring*, and *Connolly* allows mentally incompetent individuals like Ms. Frost to voluntarily, but unknowingly forfeit their constitutional protections against self-incrimination. The East Virginia Supreme Court's holding directly contravenes *Miranda's* constitutional floor and cannot stand in light of this Court's waiver precedent.

C. The East Virginia Supreme Court's misapplication of this Court's waiver precedent fails to accommodate for particularly vulnerable individuals who lack the capacity to comprehend their Fifth Amendment privileges.

Modern courts have found that an individual waived their *Miranda* rights where they have done so voluntarily and demonstrated some "minimal understanding" of their rights. Lauren Rogal, *Protecting Persons with Mental Disabilities from Making False Confessions: The Americans with Disabilities Act as a Safeguard*, 47 N.M. L. Rev. 64, 73 (2017). However, those with mental impairments which severely affect their ability to discern reality from fiction are far less likely to understand their rights, and "may mistakenly believe they understand their rights or may feign understanding out of embarrassment or fear of upsetting the police." *Id.* at 74.

Thus, post-*Miranda* courts have understood that both temporary and permanent incapacitation can render one incapable of understanding their rights. For example, in *State v. Gagnon*, a DUI suspect who was severely intoxicated during his interrogation and voiced that he did not understand his rights in an "argumentative tone" was incapable of comprehending his *Miranda* rights. 651 A.2d 5, 7 (N.H. 1994). In *Cooper v. Griffin*, the Fifth Circuit held that confessions of two teenagers whose I.Q.'s ranged between 61 and 67 were inadmissible where it was "doubtful that they even comprehended all of the words that were read to them." 455 F.2d 1142, 1146 (5th Cir. 1972).

Neither *Gagnon* nor *Griffin* were decided on the issue of voluntariness, but instead were resolved solely because the individuals could not have understood their rights despite the fact that police were acting within lawful bounds. None would argue that mental impairments are the fault of the police, but this does not otherwise prevent waivers from being rescinded by the courts when the individuals still cannot understand their *Miranda* rights in the first place. Despite the East Virginia Supreme Court's insistence, and as illustrated by *Gagnon* and *Griffin, Miranda's* waiver requirements cannot be read in such a manner that entirely fails to account for an individual's failure to comprehend reality in the first place.

D. It is undisputed that Ms. Frost did not understand her Miranda rights during her interrogation, nor did she understand the consequences of signing the waiver Officer Barbosa engaged her with.

The government bears the "heavy burden" to show that one fully comprehended their Fifth Amendment rights before proceeding to make incriminatory statements to law enforcement; a defendant's competency to make a knowing and intelligent waiver cannot be presumed. *Berghuis v. Thompkins*, 560 U.S. 370, 383–84 (2010). Even if the state establishes that the accused gave law enforcement an uncoerced statement, the prosecution must make the additional showing that the accused actually understood these rights. *Spring*, 479 U.S. at 573–75; *see also Carnley v. Cochran*, 369 U.S. 506, 516 (1962) (government could not show that accused understandingly waived his right to counsel in light of "silent record"). A written waiver alone is ultimately neither enough nor necessary to establish waiver of one's *Miranda* rights. *North Carolina v. Butler*, 441 U.S. 369, 373 (1979). Further, reviewing courts must look to the totality of the circumstances surrounding the waiver, including the personal characteristics of the defendant in determining whether a waiver was properly obtained. *Id.* at 374–75.

As this Court held in *Tague v. Louisiana*, an officer who does not perceive anything suspicious about a suspect's competence cannot substitute as evidence that the suspect actually understood their rights. 444 U.S. 469, 470 (1980) (per curiam). In *Tague,* the officer who interrogated an armed robbery defendant testified that he *Mirandized* the defendant by reading from a pre-written card. *Id*. at 469. The defendant then made an inculpatory statement which he later sought to suppress. *Id.* at 471. During the defendant's suppression hearing, the interrogating officer could not recall whether he asked defendant if he understood his rights, nor did he have defendant complete any tests that would suggest he understood them. *Id.* at 469. The Louisiana Supreme Court held that, while there was no other evidence suggesting that the defendant understood his *Miranda* rights, as a matter of law it could be presumed that he had the capacity to understand his rights unless other evidence suggested otherwise. *Id.* at 469–70. This Court reversed the Louisiana court's "readily apparent" error in presuming a suspect's competence since there was no evidence during the interrogation that the defendant understood his rights before making a statement. *Id.* at 471. The presumption belonged to the suspect, and the officer's testimony in *Tague* simply failed to illustrate the suspect's competence. *Id.* On remand, the Louisiana Supreme Court ordered that defendant be entitled to a new trial with the unlawfully obtained confession. *State v. Tague*, 381 So. 2d 507, 507 (La. 1980) (per curiam).

Here, the totality of the circumstances conclusively shows that Ms. Frost did not comprehend her *Miranda* rights before speaking to Officer Barbosa. For instance, Dr. Frain's undisputed expert testimony established that Ms. Frost did not understand her *Miranda* rights and did not understand the consequences of signing the written waiver. R. at 5. Notably, Ms. Frost was brought in for questioning the day following the discovery of Smith's body. R. at 2. Dr. Frain's

testimony concluded that it was highly likely Ms. Frost suffered from severe delusions and paranoia on the day she spoke with Officer Barbosa. R. at 4.

While Officer Barbosa indicated that none of this was apparent during the earlier part of his examination, R. at 2, he did not proffer any affirmative evidence suggesting that Ms. Frost understood her rights before answering his questions. Officer Barbosa only *Mirandized* Ms. Frost and had her sign a written waiver of her rights, just like the officer in *Tague*, and proceeded to interrogate her without asking whether she understood her rights. R. at 2. As noted in *Butler*, a written waiver alone does not mean Ms. Frost comprehended her rights, especially where no other evidence surrounding the interrogation suggested that she understood the nature of the rights she was forfeiting by speaking to Officer Barbosa. Moreover, Officer Barbosa only asked Ms. Frost whether she would like to invoke her rights *after* she made her inculpatory statement, and *after* he had reason to believe that Ms. Frost was mentally incompetent to effectuate a valid waiver. R. at 3. Therefore, where Ms. Frost's expert examination concluded that she did not have the mental capacity to give an effective waiver, and where Officer Barbosa provided no evidence that Ms. Frost actually understood her rights during the interrogation, it must follow that her waiver was not knowingly and intelligently made.

Ultimately, the East Virginia Supreme Court misapplied this Court's waiver precedent by holding that only police misbehavior would warrant the suppression of a confession. This Court's decisions have consistently held otherwise and required that individuals appreciate the meaning of their rights even when law enforcement does not coerce the individual to speak. The East Virginia Supreme Court's holding below forces mentally incompetent individuals like Ms. Frost to testify against themselves despite the Fifth Amendment's privilege against self-incrimination. This Court's decisions in *Miranda*, *Connelly*, *Spring*, and *Tague* lead to the natural conclusion that

confessions taken by those with psychological disorders cannot be admitted against them in light of an otherwise silent record. Therefore, this Court should reverse the decision of the state supreme court and remand for further proceedings.

II. The Mens Rea Approach to Evidence of Mental Impairment Violates the Eighth Amendment's Prohibition of Cruel and Unusual Punishment and the Fourteenth Amendment Right to Due Process Because It Fails to Protect Defendants Who Cannot Appreciate the Wrongfulness of Their Crimes from Punishment and the Traditional Insanity Defense is a Protected Right of Mentally Ill Defendants.

Mentally impaired defendants are protected by two constitutional provisions, among others, via the traditional insanity defense. The traditional insanity defense as allowed by forty-five states, the federal government, military tribunals, and the District of Columbia functions as an affirmative, complete defense to the crime charged. R. Michael Shoptaw, *M'Naghten Is A Fundamental Right: Why Abolishing the Traditional Insanity Defense Violates Due Process*, 84 Miss. L.J. 1101, 1107 (2015). Defendants who successfully prove this defense are acquitted rather than adjudicated guilty even if the prosecution proves every element of the crime charged. *See Durrence v. State*, 287 Ga. 213, 217 (Ga. 2010); *People v. Hill*, 934 P.2d 821, 828 (Colo. 1997). Comparatively, in "mens rea approach" jurisdictions, evidence of insanity is only admissible as it pertains to an element of the crime, most often the mens rea element, and the defendant is only entitled to acquittal if a jury finds the element unproven. *State v. Herrera*, 895 P.2d 359, 362 (Utah 1995). Defendants who have intent to commit a particular act are found guilty regardless of their ability to appreciate the wrongfulness of the act. *Finger v. State*, 117 Nev. 548, 561 (Nev. 2001).

While the traditional approach may seem to be an incredulous oversight in the judicial system, it serves an important purpose in protecting the mentally ill from unjust punishment. This purpose, notably, is achieved with minimal abuse from conniving defendants. *Id.* at 557 ("In the

past one hundred and fifty years, few defendants with mental health problems have been acquitted based upon the legal insanity test set forth in *M'Naghten*.").

If evidence to the defendant's ability to appreciate the wrongfulness of their actions is not permitted, a large population of individuals with a mental disease or defect are left without a defense. *United States v. Pohlot*, 827 F.2d 889, 900 (3d Cir. 1987). Only those that suffer from a severe mental disorder that inhibits their ability to form the requisite intent to commit the crime—a severe minority of defendants—are afforded protections. *Id*. ("Only in the rare case, however, will even a legally insane defendant actually lack the requisite mens rea purely because of mental defect. As the House Report stated: "Mental illness rarely, if ever, renders a person incapable of understanding what he or she is doing. Mental illness does not, for example, alter the perception of shooting a person to that of shooting a tree."); *Herrera*, 895 P.2d at 363 ("Admittedly, this amended statute limits the insanity defense to a very narrow class of extremely mentally ill defendants").

By limiting evidence to one element of the crime, the mens rea approach simply does not afford the same protections to mentally ill defendants as the traditional affirmative defense. It is for that reason the traditional defense is entitled to constitutional protection which E. Va. Code § 21-3439 has run afoul of, and thus, this Court should find that the Supreme Court of East Virginia incorrectly held that East Virginia's mens rea approach statute does not violate Ms. Frost's Eighth and Fourteenth Amendment rights.

A. <u>E. Va. Code § 21-3439 violates the Eighth Amendment prohibition against cruel and unusual punishment by stripping away a meaningful defense which has traditionally been made available to mentally ill defendants.</u>

Through incorporation, the Eighth Amendment prohibits the states from imposing cruel and unusual punishments on their citizens. *Robinson v. California*, 370 U.S. 660, 666–67 (1962).

As part of the Bill of Rights, the Eighth Amendment and its provisions are liberally construed by the Court to protect the liberties of the citizens. *Boyd v. United States*, 116 U.S. 616, 634 (1886). Over time, the Eighth Amendment's cruel and unusual punishments clause has been construed in a manner that prohibits the punishment of individuals who lack the ability to appreciate the wrongfulness of their actions. *Graham v. Florida*, 560 U.S. 48, 67 (2010); *Sinclair v. State*, 132 So. 581, 583 (Miss. 1931). East Virginia Code § 21-3439 violates this constitutional mandate by precluding individuals like Ms. Frost from introducing evidence of mental disease or defect to show their lack of ability to know right from wrong.

The Eighth Amendment prohibits "modes or acts of punishment that had been considered cruel and unusual at the time that the Bill of Rights was adopted." *Ford v. Wainwright*, 477 U.S. 399, 405 (1986). The Eighth Amendment also takes into account "objective evidence of contemporary values before determining whether a particular punishment comports with the fundamental human dignity that the Amendment protects." *Id.* at 406. These two prohibitions serve as the Eighth Amendment's "constitutional floor" and "outer boundaries." Michael Clemente, Note, *Reassessment of Common Law Protections for "Idiots,"* 124 Yale L.J. 2746, 2754 (2015). By eliminating an affirmative insanity defense, mens rea approach states like East Virginia have legislatively sanctioned punishment of the legally insane.

According to scholars, "English common law considered it 'cruel' to execute idiots, lunatics, and the insane."[4] Clemente, *supra*, at 2756. Justice Marshall in *Ford* outlined the common law history, stating that "[t]he bar against executing a prisoner who has lost his sanity bears

[4] Scholars later reviewing this decision explain that Justice Marshall surveyed the works of Edward Coke, Matthew Hale, John Hawles, William Hawkins, and William Blackstone, who described the execution of the insane as "savage and inhuman," a "miserable spectacle," and "of extreme inhumanity and cruelty." Clemente, *supra*, at 2746.

impressive historical credentials." 477 U.S. at 406. Moreover, Justice Marshall noted that "we know of virtually no authority condoning the execution of the insane at English common law." *Id.* at 408. A similar discussion has taken place regarding sentencing of the mentally ill, most broadly in *Sinclair*, where the Mississippi Supreme Court struck down the state's attempt to abolish the insanity defense:

> Insanity to the extent that the reason is totally destroyed so as to prevent the insane person from knowing right from wrong, or the nature and probable consequence of his act, has always been a complete defense to all crimes from the earliest ages of the common law. The common law proceeds upon an idea that before there can be a crime there must be an intelligence capable of comprehending the act prohibited, and the probable consequence of the act, and that the act is wrong.

Sinclair, 132 So. at 583. Modern assessments of offenders frequently turn on the four penological justifications, which are a crucial part of the Eighth Amendment analysis. As the Supreme Court of Idaho explained in *State v. Delling*, sentences are "reasonable" if they appear "necessary to accomplish the primary objective of protecting society" and "the related goals of deterrence, rehabilitation, or retribution." 267 P.3d 709, 719 (Idaho 2011). In the absence of a valid reason to pursue punishment, sentencing is unjustified. *Graham*, 560 U.S. at 71 ("A sentence lacking any legitimate penological justification is by its nature disproportionate to the offense."). Retribution, deterrence, incapacitation, and rehabilitation are simply not achieved by punishing the mentally ill.

As the *Herrera* dissent explained, retribution incorporates the "fundamental notion" that wrongdoers deserve the penal consequences of their acts—but defendants who are "incapable of forming the general mens rea to do wrong cannot be said to deserve to be blamed." 895 P.2d at 389 (Dunham, J., dissenting). Deterrence cannot be fulfilled where the defendant is incapable of appreciating the criminality of his conduct. *State v. Kahler*, 410 P.3d 105, 138 (Kan. 2018)

(Johnson, J., dissenting) ("it is the same cognitive and behavioral impairments that make these defendants less morally culpable . . . that also make it less likely that they can process the information of the possibility of execution as a penalty and, as a result, control their conduct based upon that information"), *cert. granted*, 139 S. Ct. 1318 (2019). Incapacitation and rehabilitation work in tandem and are similarly better served with another means due to the defendant's mental status. While society may be protected by their incarceration, a defendant who lacks understanding of the wrongfulness of their act cannot be rehabilitated by the penal environment and thus may face a worsened condition actually increasing the risk of public harm.[5]

This Court has a long history of mandating and maintaining the historical protections of the mentally ill from criminal punishment. Not only would it be cruel, it would certainly be unusual since every jurisdiction has recognized the insanity defense, thus if a defendant was convicted and proceeded to sentencing, they failed to convince the factfinder of their mental status and were not legally insane.

B. E. Va. Code § 21-3439 violates the Fourteenth Amendment's requirement of due process by completely revoking a fundamental protection afforded to mentally impaired defendants.

The Fourteenth Amendment Due Process Clause incorporates rights to the people which "have been found to be implicit in the concept of ordered liberty" such that "a fair and enlightened system of justice would be impossible without them." *Palko v. Connecticut*, 302 U.S. 319, 325 (1937). The underlying theme of due process evaluations is "a sense of historical precedent upon

[5] *See* Edward P. Mulvey & Carol A. Schubert, *Mentally Ill Individuals in Jails and Prisons*, 46 Crime & Just. 231, 236–37 (2016). Defendants with serious mental illnesses stay in jail for longer compared to similar offenders, are less likely to be placed on probation or other forms of community-based supervision and are more likely to be involved in assaults and be assault victims. *Id.* at 236–37. Mentally ill defendants are also more likely once released to violate parole conditions and be returned to prison as a result. *Id.* at 237.

which American institutions were founded and our continuing legal traditions," that the "proper focus in evaluating the place of a particular doctrine in the concept of due process is the pervasiveness of the doctrine in the history of the common law." *State v. Searcy*, 798 P.2d 914, 928 (Idaho 1990) (McDevitt, J., dissenting). Justice McDevitt urged a review of both history and unanimity among American jurisdictions should guide whether a right is "implicit in the concept of ordered liberty." *Id.* at 924, 934.

History and precedent clearly instruct that a reprieve from conviction is warranted for defendants who are incapable of forming the mens rea to commit the crime for which they have been accused. "Legal insanity" is the concept which enshrines the notion and the "insanity defense" is the means by which defendants assert the existence of the requisite diminished mental capacity. *Finger*, 117 Nev. at 555. Persons are traditionally considered legally insane when they are unable to form the required criminal intent or mens rea for the crime charged or are otherwise incapable of understanding the wrongfulness of their actions. *Id.*

1. *The insanity defense has firm historic roots.*

The concept of an insanity test was established by judges of common law courts in 1843 following public outrage at the acquittal of Daniel M'Naghten, who attempted to assassinate the prime minister of Britain.[6] *Id.* at 556. The judges adopted a definition of legal insanity, now known

[6] Protections for the mentally ill facing criminal sanction date back to fifth century B.C. when Greek moral philosophers considered the distinction between a culpable and nonculpable act to be among the "unwritten laws of nature supported by the universal moral sense of mankind. *Herrera*, 895 P.2d at 375 (Stewart, C.J., dissenting). Similar views were found in Roman Law, early Christian theologians, and Anglo-Saxon law around the twelfth century. *Id.* A complete insanity defense was also recognized during the reign of Edward I in the late 1200's and Edward II in the 1300's, entitling defendants to acquittal. *Searcy*, 798 P.2d at 929 (McDevitt, J., dissenting). Early American cases then tracked English law on the subject and set as the backdrop for the early American view that "[t]o punish an insane man, would be to rebuke Providence." *Roberts v. State*, 3 Ga. 310, 328 (Ga. 1847).

as the *M'Naghten* rule, defining legal insanity as a defendant under a delusion so great it (1) robs the defendant of the ability to understand what they are doing or (2) deprives the defendant of the ability to appreciate the wrongfulness of their action. *Id.* at 556–57.

American courts, like their English predecessors considered defendants ability to appreciate the wrongfulness of their actions, finding no responsibility if they did not. *Roberts v. State*, 3 Ga. 310, 330 (Ga. 1847). This view was supported until the early twentieth century when reforms began. These included legislative attempts to abolish the insanity defense, each of which were overturned by the state supreme courts. *Searcy*, 798 P.2d at 932. Procedural debates focused on whether insanity should be an affirmative defense proven by the defendant or a rebuttable presumption. *See Leland v. Oregon*, 343 U.S. 790, 799 (1952).

The uniformity of the traditional insanity defense was broken in 1979 when Montana statutorily abolished its insanity defense in favor of the mens rea approach. *State v. Korell*, 213 Mont. 316, 330 (Mont. 1984). Taking note of Montana's divergence from tradition, Idaho, Kansas, and Utah followed suit and too abolished their insanity defenses through legislation. *Kahler*, 410 P.3d at 125. With Montana's holding in *Korell* as precedent, each of these codes were upheld at the state supreme court level. *Id.* In 2012, this Court declined certiorari in *Delling v. Idaho* with three dissenting justices writing that "[t]he law has long recognized that criminal punishment is not appropriate for those who, by reason of insanity, cannot tell right from wrong." 568 U.S. 1038, 1038 (2012) (Breyer, J., dissenting from denial of certiorari). Justice Breyer highlighted the fundamental flaw in these mens rea approach jurisdictions in that they "permit[] the conviction of an individual who knew what he was doing, but had no capacity to understand that it was wrong." *Id.*

The insanity defense is time-tested and not simply a residue of the past. Today, the traditional, affirmative insanity defense is allowed by forty-five states, the federal government, military tribunals, and the District of Columbia and functions as a complete defense. Shoptaw, *supra*, at 1107. States that have abolished this vital defense, have run afoul to the Fourteenth Amendment's commitment to protecting historically recognized liberties. In doing so, states like East Virginia infringe upon citizen's rights by relying on a mistaken approach to historically sound precedent. By reasoning that mentally ill defendants are entitled to less constitutional protections, states are undoubtedly committing a most fatal error.

2. *This Court has instructed states are only permitted to prescribe the procedure by which defendants present an insanity defense.*

This Court has spoken on states' right to make procedural changes in the treatment of insane defendants. One of the earliest decisions being the reasoning of *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934), that states are "free to regulate the procedure of its courts in accordance with its own conception of policy and fairness, unless in doing so it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." This concept was followed in *Speiser v. Randall*, 357 U.S. 513, 523 (1958), where this Court found that it is "within the power of the State to regulate procedures under which its laws are carried out, including the burden of producing evidence and the burden of persuasion." However, state decisions are still subject to proscription under the Due Process Clause if it "offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked fundamental" *Snyder*, 291 U.S. at 105. This concept carried over to the rights of mentally ill defendants in the reasoning of *Leland v. Oregon*, where this Court upheld Oregon's legal insanity statute requiring defendants prove legal insanity beyond a reasonable doubt as a permissible procedural method, although not requiring the use of a specific procedure or test. 343 U.S. 790, 799 (1952).

State discretion to make procedural determinations is sensible in light of the topic area. Best practices for managing the intersection of mentally ill defendants and criminal conduct are ever-changing due to scientific and medical advancements. As Justice McDevitt recognized in *Searcy*, "the Court rightly recognized that no particular formulation has impeccable credentials in the annals of the common law, or is particularly likely to survive the explosive expansion of human knowledge and understanding." *Searcy*, 798 P.2d at 926 (McDevitt, J., dissenting).

Here, East Virginia is free to decide what method defendants can use to present the issue to a jury and under which standard, but what it cannot do is abolish the defense or define it in a way that "undermines a fundamental principle in our system of justice." *Finger*, 117 Nev. at 575. Though the method of asserting this defense has varied and been the subject of debate, the ability to assert the defense—affirmatively—has not. The present case does not present such a procedural issue or decision which this Court has determined resides with the States. Rather, this case presents a substantive change in the law masquerading as a procedural one.

3. *Mens rea approach states have far exceeded their powers.*

Despite clear guidance from this Court regarding the proper role of the states in enacting criminal justice reforms, the mens rea approach states have abolished a vital defense for defendants who, though acting intentionally, lack the capacity to appreciate the wrongfulness of their conduct. These courts rely critically on this Court's insistence not to endorse a specific test or process. *State v. Cowan*, 260 Mont. 510, 517 (Mont. 1993). *See also Delling*, 267 P.3d at 715 ("The Court has declined to grant a writ of certiorari for any Idaho case on this matter. . . . While this in itself is not dispositive of anything, it reinforces the language found in other U.S. Supreme Court opinions that these types of decisions are left to the states."). These states have mistaken this Court's silence on

the issue as a license to narrow defendants' capability of asserting a defense, often the only defense they have.

Social policy provides many clues as to why states have taken such an extreme approach. Public support for the insanity defense declined following John Hinckley's acquittal in the attempted assassination of President Ronald Reagan after asserting the insanity defense.[7] *Finger*, 117 Nev. at 559. Just as in the British common law era, jurisdictions almost immediately sought changes in their laws. *Herrera*, 895 P.2d at 361 ("public outrage prompted Congress and some states to reexamine their respective insanity defense laws") (citing *State v. Young*, 853 P.2d 327, 383 (Utah 1993)). Two main approaches included the emergence of the guilty but mentally ill verdict, *Clark v. Arizona*, 548 U.S. 735, 752 (2006) (referencing state statutes that have replaced the "not guilty by reason of insanity" verdict with "guilty but mentally ill"), and the abolition of legal insanity as a defense.[8] Here, East Virginia has adopted the latter, more restrictive of the two approaches.

Though enacting criminal justice reform is well within the province of the states, taking on reforms that infringe upon the fundamental rights of the citizenry is not permitted by the

[7] Hinckley asserted the insanity defense via irresistible compulsions from a mental disease or defect under the Durham rule. *Finger*, 117 Nev. at 559–60.

[8] Nevada, for example, amended its statutes in 1995 to abolish the insanity defense following the urging of the Nevada District Attorney's Association. *Id.* at 563. Prosecutors asserted that too many courts were allowing defendants to present evidence of mental health problems without supporting evidence, which became costly and time consuming for the state. *Id.* Nevada courts were reluctant to exclude the evidence because of defendants right to present evidence and request the affiliated jury instructions. *Id.* at 564. Despite acknowledging that there was confusion in the case law on the actual definition of legal insanity in the state and that no one had been acquitted improperly, the Association settled on following the Idaho, Montana, and Utah statutes on the subject, abolishing the traditional insanity defense and adopting the new plea of guilty, but mentally ill—under this modified concept, at sentencing the judge could determine whether the defendant was suffering a mental illness and a treatment to suggest. *Id.*

Constitution. Regardless of the aims of these state laws, their effect is subject to Constitutional scrutiny, and the required standard is not met.

4. *A proper evaluation of due process reveals the insanity defense as constitutionally protected that must be allowed in the form of an affirmative defense.*

East Virginia and the four other states adopting the mens rea approach have entered a marred area of law, relying upon a jenga-puzzle of flawed reasoning. None of the approaches to the issue capture an accurate interpretation of the issues at stake here. The insanity defense is not a rule of evidence, it is a substantive right based upon ancient principles which is exercised via certain procedures as determined by the states. Thus, the abolition of this right via its replacement with a rule of evidence directed at circumventing it, is not a rule-based decision within the purview of the states.

The right to present an insanity defense itself is a substantive legal right. Thus, a state's abolition of the latter defense is more than a simple procedural amendment, but in reality, a substantive legal change. As the dissent in *Herrera* explained, cases such as *Leland* "do not support the constitutionality of a statute which abolishes the insanity defense; they simply deal with the right of the states to fashion the procedure for proving the content of the defense and the details of its substantive content." 895 P.2d at 379. Where states step outside of this protected area of procedure, their decisions are subject to further constitutional scrutiny.

The central substantive principle is that defendants not be held criminally responsible if their mental impairment prevents them from possessing the requisite criminal intent. Defendants unable to appreciate the criminality of their conduct, thus not morally culpable, should not be subject to punishment if the factfinder agrees with their condition being as asserted. Under any analysis it is clear that the traditional insanity defense hinges on a defendant's assertion via counsel that they lacked the mens rea to commit the criminal act. *Finger,* 117 Nev. at 569. It is an assertion

that due to their mental condition at the time of the offense, they did not possess the mental state of a culpable person, and thus should not be punished. Accordingly, the *Finger* court described legal insanity as "a corollary of mens rea." *Id*. Legal insanity, however, as a matter of necessity, surpasses the mens rea element of a crime. As evidenced by Ms. Frost, an individual may have intent to commit the particular act, satisfying the mens rea element of most crimes, but may still not appreciate the criminal nature or the wrongfulness of it.

This is evidenced by the fact that "[t]he existence of a mental disease or defect in a person does not necessarily preclude the person from acting purposely or knowingly." *Cowan*, 260 Mont. at 514. A defendant can act with the requisite state of mind required as an element of the crime yet still not appreciate the criminality of their conduct or be able to conform their conduct to the law. *Id*. at 520. Under a mens rea approach jurisdiction, such an individual would always be subject to punishment (notwithstanding the fact that they could not appreciate the wrongfulness of their actions).

Central to the analysis of *Finger* and other cases exploring the constitutionality of the mens rea approach was the issue of whether due process simply required that the defendant be able to present evidence of insanity or present such evidence as an affirmative defense. *See Finger*, 177 Nev. at 569. The right as historically recognized follows the same analysis. We know that legal insanity as a barrier to conviction, and in some cases the legal system in full, has been recognized since the fifth century B.C., preserved through the English common law, carried over to the colonies, and maintained through years of recorded precedent. In *Leland*, this Court stated "[t]he fact that a practice is followed by a large number of states is not conclusive in a decision as to whether that practice accords with due process, but it is plainly worth considering in determining whether the practice 'offends some principle of justice so rooted in the traditions and conscience

of our people as to be ranked as fundamental.'" 343 U.S. at 798. The American Bar Association too has stood behind this principle, criticizing the new mens rea model as a "jarring reversal of hundreds of years of moral and legal history," calling it "an unfortunate and unwarranted overreaction to the Hinckley verdict." *Finger*, 117 Nev. 569–70.

Contrary to this prevailing principle, each mens rea approach jurisdiction problematically equates the ability to attack the state's theory of mens rea with a proper insanity defense or asserts the right never existed. These states ignore history as well as the troubled defendant who can form intent but without being morally culpable. As Justice McDevitt explained, though the insanity defense and mens rea both address criminal culpability, "that fact does not merge the one concept into the other" *Searcy*, 798 P.2d at 921 (McDevitt, J., dissenting).

Evidence of insanity must necessarily not be limited to the mens rea element in the way East Virginia and other states have done, but be permitted as an external, independent defense. This is particularly true if states are to live up to historical practice of protecting those who are incapable of possessing criminal intent from being subjected to punishment.

CONCLUSION

Because the East Virginia Supreme Court failed to exclude Ms. Frost's confession despite her incapability of understanding her *Miranda* rights, and because the state legislature outright eliminated Ms. Frost's ability to raise a constitutionally protected defense at trial, this Court should reverse the decision of the state supreme court and remand for further proceedings.

Respectfully submitted this 13th day of September 2019.

/s/ Team A
Team A
Counsel for Petitioner